

## **EXHIBIT 2**

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**From:** [Helen Chaitman](#)  
**To:** [Jacobs, Edward J.](#)  
**Cc:** [Amy Sanchez](#); [Greg Dexter](#); [Sarah Howell](#); [Sheehan, David J.](#); [Cremona, Nicholas](#); [Jennifer Allim](#)  
**Subject:** RE: Madoff.Clawback Notice of Subpoena of Neilay Mahta  
**Date:** Friday, March 17, 2017 6:56:09 PM

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As we serve the subpoenas we will provide you with proof of service. Just because the fraud, according to Madoff, started with split strike in 1992 does not mean that Madoff did not continue to purchase securities for the convertible arbitrage clients into 1997; nor does it mean that Madoff did not, in fact, purchase securities for the investment advisory customers. In fact, even in 2008 he used investment advisory customers' money to purchase securities.

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**From:** Jacobs, Edward J. [mailto:[ejacobs@bakerlaw.com](mailto:ejacobs@bakerlaw.com)]  
**Sent:** Friday, March 17, 2017 6:14 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Cc:** Amy Sanchez <[asanchez@chaitmanllp.com](mailto:asanchez@chaitmanllp.com)>; Greg Dexter <[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)>; Sarah Howell <[showell@chaitmanllp.com](mailto:showell@chaitmanllp.com)>; Sheehan, David J. <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>; Cremona, Nicholas <[ncremona@bakerlaw.com](mailto:ncremona@bakerlaw.com)>; Jennifer Allim <[jallim@chaitmanllp.com](mailto:jallim@chaitmanllp.com)>  
**Subject:** Re: Madoff.Clawback Notice of Subpoena of Neilay Mahta

Helen,

That's just not true. In addition, Madoff made statements to the effect that his fraud "started" in 1992 in his allocution. Your delay is inexcusable.

Have you served the subpoenas yet? Please forward records of service immediately.

Respond to my questions, please.

Ted

On Mar 17, 2017, at 6:06 PM, Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)> wrote:

We are taking these depositions as part of fact discovery. We believe we are entitled to use the depositions in all of the cases because the Trustee misrepresented the nature and extent of the fraud and, but for the Madoff deposition, we would never have known that. You are welcome to raise the issue with Judge Bernstein. He ordered the Trustee to produce all of Madoff's trading records and the Trustee ignored that order. The Trustee never gave Dubinsky Madoff's trading records and never put them in the E-Data Room. Then the Trustee relied entirely upon Dubinsky's

report which is fatally defective now that the facts are known.

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**From:** Jacobs, Edward J. [<mailto:ejacobs@bakerlaw.com>]  
**Sent:** Friday, March 17, 2017 4:41 PM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Cc:** Amy Sanchez <[asanchez@chaitmanllp.com](mailto:asanchez@chaitmanllp.com)>; Greg Dexter <[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)>; Sarah Howell <[showell@chaitmanllp.com](mailto:showell@chaitmanllp.com)>; Sheehan, David J. <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>; Cremona, Nicholas <[ncremona@bakerlaw.com](mailto:ncremona@bakerlaw.com)>  
**Subject:** RE: Madoff.Clawback Notice of Subpoena of Neilay Mahta

Helen,

We completed our review of the ten subpoenas you noticed as of 9:13 pm on March 15, 2017 and the “Schedule A” listing dozens of cases in which they were purported to be noticed. We object to the service of all of the subpoenas in all listed cases for the following reasons:

First, the “Schedule A” you attach includes cases where fact discovery has closed. These cases are:

10-04898	Helene Saren-Lawrence
10-04658	Carol Nelson
10-04377	Carol Nelson, individually and as joint tenant, et al.
10-04621	Donald A. Benjamin
10-04367	Benjamin T. Heller
10-04956	D. M. Castelli
10-04503	Judd Robbins
10-04614	Robert S. Whitman
10-04428	Allen Meisels
10-04740	Robert Hirsch, as an individual, and as joint tenant, et al.
10-04669	Zieses Investment Partnership
10-04878	Lisa Beth Nissenbaum
10-05130	Barbara Kotlikoff Harman
10-04712	Joseph S. Popkin Revocable Trust

Any subpoenas served in connection with these cases are therefore untimely and improper under the relevant Court orders and applicable rules because discovery has closed. Additionally, these subpoenas all appear to be targeted to former BLMIS employees, all of whom have been known to you and disclosed since the inception of these cases. Accordingly, there is no excuse for your delay.

Second, the subpoenas directly relate to the specific areas of inquiry articulated in the Order

Authorizing the Deposition of Bernard L. Madoff. Pursuant to that Order, and an “opt-in” process ratified by the Court, only certain of your cases were authorized to participate by the Court. Since the instant subpoenas on their face directly relate to the areas of inquiry specifically contemplated by that Order, i.e., your position that the BLMIS Ponzi scheme did not begin until 1992, the subpoenas are not proper in any case not previously authorized to participate in that deposition. Those cases as listed on “Schedule A” include the following:

10-04352	RAR Entrepreneurial Fund
10-04489	Marlene Krauss
10-04539	Gerald and Barbara Keller Family Trust
10-04541	Felice Perlman
10-04562	Robert F. Ferber
10-04610	The Whitman Partnership
10-04644	Russell Dusek
10-04648	Peter Kamenstein
10-04709	Andrew M. Goodman
10-04753	Carla Ginsburg
10-04768	Betty Cohen
10-04837	Leslie Ehrlich
10-04867	Estate of Steven I. Harnick
10-04885	Edward F. Seligman
10-04889	Savin
10-04905	Train Klan
10-04914	Edyne Gordon
10-05094	The Estate of Leonard Miller
10-05116	Leonard J. Oguss
10-05127	Atwood Management
10-05150	Plafsky Family

Third, for the cases that the Court did authorize to participate in the Deposition of Bernard L. Madoff, you are explicitly required by Court Order to obtain approval from the Court before seeking any additional discovery in connection with your position that the BLMIS Ponzi scheme did not begin until 1992. Because you have not obtained such approval from the Court, the subpoenas are improper with respect to those cases as well. At a minimum, we should discuss and present to the Court, at the conclusion of Mr. Madoff’s deposition, which additional third party discovery (if any) is needed and conduct that discovery pursuant to an agreed upon procedure and schedule for the sake of efficiency. This is what the Court has requested.

As such, please confirm that you have not, and will not, serve the subpoenas. If they have already been served, confirm that they have been withdrawn. Otherwise, service was improper since you did not give us reasonable notice to object to the subpoenas as noted in my emails below and we will need to seek judicial intervention for the reasons set forth.

Further, copy us on any correspondence with the subpoenaed persons and/or their counsel going forward.

Regards,

Ted

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**From:** Helen Chaitman [<mailto:hchaitman@chaitmanllp.com>]  
**Sent:** Thursday, March 16, 2017 11:21 AM  
**To:** Jacobs, Edward J.  
**Cc:** Amy Sanchez; Greg Dexter; Sarah Howell; Sheehan, David J.; Cremona, Nicholas  
**Subject:** RE: Madoff.Clawback Notice of Subpoena of Neilay Mahta

Ted: Under Rule 26(e), we do not have to amend our initial disclosures when the additional information has become known to you during the discovery process. As you know from our efforts over the past year, we are taking discovery of the trading activities of BLMIS and Madoff, for the entire period from 1980 on. That is why we have been demanding production of all the trading records within the Trustee's possession or control from 1980 on; and that is why we are seeking to depose a number of the traders.

We are serving the subpoenas but, of course, will work with you to assure that the dates of the depositions are reasonably convenient for you.

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**From:** Jacobs, Edward J. [<mailto:ejacobs@bakerlaw.com>]  
**Sent:** Thursday, March 16, 2017 9:52 AM  
**To:** Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Cc:** Amy Sanchez <[asanchez@chaitmanllp.com](mailto:asanchez@chaitmanllp.com)>; Greg Dexter <[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)>; Sarah Howell <[showell@chaitmanllp.com](mailto:showell@chaitmanllp.com)>; Sheehan, David J. <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>; Cremona, Nicholas <[ncremona@bakerlaw.com](mailto:ncremona@bakerlaw.com)>  
**Subject:** Re: Madoff.Clawback Notice of Subpoena of Neilay Mahta

Helen,

You have had many years to serve Rule 45 subpoenas, so any time pressure you now face is your own doing. Your delay does not obviate your need to comply with the plain language of Rule 45, which requires reasonable notice to all parties prior to service. We have no desire to unnecessarily delay your efforts, but we will have objections to the subpoenas in many cases listed in your Exhibit As. However, we have not had reasonable time to review these ten subpoenas in the many dozens of cases you intend to serve them. If you serve the subpoenas now, you will have deprived us of our opportunity to meet and confer on the full scope of our objections. We will get to you a complete list of our objections shortly, and expect that that no subpoena will be served until then, at a minimum.

Furthermore, none of the subpoena recipients appear anywhere in any of the initial disclosures served by you in any case you propose to serve the subpoenas, whether service at this time would be proper or not, as far as I can tell. We further demand that you comply with your disclosure obligations consistent with the Rule 26 prior to service of any of these subpoenas. Please let us know a date certain by when we can expect these disclosures.

We reserve all rights.

Ted

On Mar 16, 2017, at 8:57 AM, Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)> wrote:

Ted: We are not going to hold up serving the subpoenas. We have time pressures to move forward with the discovery. Moreover, if you recall, at your request Judge Bernstein enjoined me from even communicating with parties on whom your office served subpoenas and I don't see any authority for you to enjoin service of the subpoenas. We will serve the subpoenas and, of course, work with you on the deposition dates to assure that the dates work for you.

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**From:** Jacobs, Edward J. [<mailto:ejacobs@bakerlaw.com>]  
**Sent:** Wednesday, March 15, 2017 11:24 PM  
**To:** Amy Sanchez <[asanchez@chaitmanllp.com](mailto:asanchez@chaitmanllp.com)>; Helen Chaitman <[hchaitman@chaitmanllp.com](mailto:hchaitman@chaitmanllp.com)>  
**Cc:** Greg Dexter <[gdexter@chaitmanllp.com](mailto:gdexter@chaitmanllp.com)>; Sarah Howell <[showell@chaitmanllp.com](mailto:showell@chaitmanllp.com)>; Sheehan, David J. <[dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)>; Cremona, Nicholas <[ncremona@bakerlaw.com](mailto:ncremona@bakerlaw.com)>  
**Subject:** RE: Madoff.Clawback Notice of Subpoena of Neilay Mahta

Helen,

Refrain from serving any of the ten subpoenas (attached) you noticed as of 9:13 pm this evening, March 15, 2017, until we have had a reasonable opportunity to review the schedules and the accompanying Exhibit A of cases in which you propose to serve each of them, as you are required to do under Federal Rule of Civil Procedure 45. We will let you know if we wish to have a meet and confer concerning any objections prior to their service.

Regards,  
Ted

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**From:** Amy Sanchez [<mailto:asanchez@chaitmanllp.com>]  
**Sent:** Wednesday, March 15, 2017 9:09 PM  
**To:** Sheehan, David J.; Cremona, Nicholas; Jacobs, Edward J.

**Cc:** Greg Dexter; Helen Chaitman; Sarah Howell  
**Subject:** Madoff.Clawback Notice of Subpoena of Neilay Mahta

Dear Counsel,

Attached, please find for service our Notice of Subpoena of Neilay Mahta.

Thank you,

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